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State v. Gardner Respondent's Brief Dckt. 43209

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43209
Plaintiff-Respondent,)	
)	Nez Perce County Case No.
v.)	CR-2014-5540
)	
ANTHONY NIKO GARDNER,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Gardner failed to establish that the district court abused its discretion by imposing a unified sentence of five years, with two and one-half years fixed, upon his guilty plea to felony domestic battery?

Gardner Has Failed To Establish That The District Court Abused Its Sentencing Discretion

A jury convicted Gardner of felony domestic battery and the district court imposed a unified sentence of five years, with two and one-half years fixed. (R.,

pp.106-07, 158-160.) Gardner filed a notice of appeal timely from the judgment of conviction. (R., pp.162-64.)

Gardner asserts his sentence is excessive in light of his mental health and substance issues, as well as his difficult childhood. (Appellant's Brief, pp.4-7.) The record supports the sentence imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The maximum prison sentence for felony domestic battery is five years. I.C. § 18-918(3). The district court imposed a unified sentence of five years, with two and one-half years fixed, which falls well within the statutory guidelines. (R., pp.158-160.) At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth in detail its reasons for imposing Gardner's sentence. (Tr.,

p.18, L.1 – p.21, L.5.) The state submits that Gardner has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court affirm Gardner's conviction and sentence.

DATED this 10th day of December, 2015.

/s/
JESSICA M. LORELLO
Deputy Attorney General

CATHERINE MINYARD
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 10th day of December, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

BEN P. MCGREEVY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/
JESSICA M. LORELLO
Deputy Attorney General

APPENDIX A

1 THE COURT: Well, Mr. Gardner, you are
2 before for me for the second time on a felony
3 charge, and I recognize things are kind of
4 different, totally different things that have
5 brought you before me. I mean that was a burglary
6 charge back in 2008, and I ultimately ended up
7 imposing the sentence in 2010.

8 So you are right, I mean you were about 20
9 years old at that point in time, and so that kind of
10 conduct is not recurred here. But probably what's a
11 bigger factor for me here is that this offense
12 occurred while you were already on misdemeanor
13 probation, but less than a month after you had
14 gotten sentenced on the two prior domestic violence
15 cases.

16 And this matter has proceeded through
17 trial and you were convicted before -- by the jury
18 of this third domestic battery offense. And as I
19 say, all of those occurred in very short period of
20 time.

21 And so the consistent thing that's been
22 presented to me over the course of your prior felony
23 history, and now through the course of these three
24 cases, is a rather, what I guess can only be
25 described as, pretty failed performance on

1 probation.

2 This particular offense where you have got
3 three of these types of circumstances over a short
4 period of time certainly causes me concern for
5 commission of further offenses. This particular
6 offense could have ended worse. There was certainly
7 an argument going on between the two of you, but all
8 of those factors were before the jury and you at
9 this point in time stand convicted of this offense
10 before this Court and you are to receive sentence
11 for that.

12 These consistent acts of domestic violence
13 against the same victim, although reading her
14 statement she really does not categorize herself
15 that way, the law certainly considers her to be that
16 in this situation, I think -- I don't think she
17 wanted to be there and testify at the trial, but she
18 did and she testified to her role and yours in what
19 happened on that day. And so I -- I think it's a
20 good thing at this point in time that you are
21 recognizing that you do have some anger issues.

22 You have had a rather difficult upbringing
23 and you are getting older at this point in time, but
24 unfortunately at this point this time, Mr. Gardner,
25 there's just nothing here in the record of your

1 performance or the circumstances of these offenses
2 that would justify probation.

3 So the real question in my mind is whether
4 something along the lines of the rider program have
5 something to offer you, and I think it certainly
6 does if you are open to it and willing to
7 participate with it.

8 So I recognize what the Department's
9 recommendation was in the presentence investigation
10 report, I have decided I'm not at this point in time
11 going to necessarily commit to a penitentiary
12 sentence in this matter without at least giving you
13 the opportunity at the rider program, so that is my
14 determination in this matter.

15 And based upon the jury's verdict in this
16 case finding you guilty of a third offense of
17 domestic battery that's punishable by up to five
18 years imprisonment, I am hereby sentencing you to
19 the custody of Idaho State Board of Corrections for
20 a period of not less than two and a half, and not
21 more than five years consisting of that minimum
22 period of confinement of two and a half years,
23 followed by a subsequent indeterminate period of two
24 and a half years . And as a further order in this
25 matter, I am going to retain jurisdiction in this

1 matter with the hopes that you will be placed in an
2 appropriate rider program, perform well in that
3 program, and then allow me to consider the
4 possibility of a probation sentence at the
5 conclusion of that.

6 And with that order then, Mr. Gardner, you
7 are hereby remanded to the custody of the Nez Perce
8 County Sheriff's Office for transfer to the
9 Department of Corrections placement in the
10 appropriate rider program, and then to be returned
11 here upon completion of that program for the Court's
12 consideration of probation at that time.

13 THE DEFENDANT: Your Honor, is it all
14 right if I just give my son a hug, give my son a hug
15 real quick before he leaves.

16 THE COURT: That's going to be up to the
17 sheriff's office whether that's going to be allowed,
18 Mr. Gardner.

19 (Hearing concluded at 2:13 p.m.)

20 (Requested appeal transcript concluded.)

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